IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4990 OF 1992

M/s.B. F. Wadia & Sons. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.

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Mr. R.V. Govilkar for the Petitioner.
Mr. C. R. Sonawane, AGP for Respondent No.1.
Mr. Rajendra Sawant for Respondent Nos.2 and 3.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 6, 2005.

P.C.:

The Petitioner is a partnership firm stated to have been registered under the Indian Partnership Act, 1932, and was the owner of lands comprised in Survey No.404A, Hissa No.1, admeasuring 5 acres and 7 gunthas of village Shahabaj in the District of Thane. The lands were notified for acquisition in pursuance of a notification dated 3rd February 1970 issued under Section 4 of the Land Acquisition Act, 1894, which was followed by a declaration under Section 6 and later, by an award dated 6th March 1973 of the Special Land Acquisition Officer. Possession

of the lands was taken.

2. The Second Respondent, City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) has been notified since 20th March 1971 as a New Town Development Authority for New Bombay under Section 113(3A) of the Maharashtra Regional and Town Planning Act, 1966 ("the Act"). On 12th August 1988, the Petitioner applied to the Second Respondent for the allotment of alternate land admeasuring about 4 acres on the ground that the Petitioner was carrying on business from the lands that were acquired. According to the Petitioner, though its main place of business was situated at Reay Road, Mumbai, the Petitioner had its office or godown situated on the lands which were acquired upon which goods belonging to the Petitioner were stored. The Petitioner was called upon by letters dated 6th January 1989 and 23rd February 1989 to produce various documents in order to support its contention of having carried on business from the lands, these being:

-(i) Non-Agricultural permission obtained from revenue

authorities;

-(ii) Village Panchayat Taxes paid if any;

-(iii) Sales Tax Licence if any;

-(iv) Contracts of Sale for supply of material from the land;

-(v) Permission from the Forest Department for stacking of Timber, if any; and

-(vi) If there was any Claim filed for loss of Timber business with the Special Land Acquisition Officer, Thane.

3. The Petitioner supplied certain documents in response to the aforesaid acquisition to which a reference would be made during the course of this order. The application of the Petitioner was considered by the Second Respondent on the basis of the documents which were furnished in response to the opportunity that was granted by the Second Respondent. The request of the Petitioner was turned down by communications dated 10th September 1991, 30th September 1991 and 6th May 1992. The

ground for refusal is that no evidence has been produced to show that the Petitioner was carrying on business in the lands on the date of the notification under Section 4 of the Land Acquisition Act, 1894.

4. The decision of the Second Respondent has been assailed on behalf of the Petitioner in these proceedings under Article 226 of the Constitution. An affidavit in reply has been filed on behalf of the Second Respondent in which the material which has been relied upon by the Petitioner has been evaluated and the order of refusal is sought to be sustained. On behalf of the Petitioner, it has been urged that the order passed by the Second Respondent fails to consider the material which was relied upon by the Petitioner in support of the plea that business was being carried on by the Petitioner from the lands in question on the date of the notification under Section 4.

5. We have heard Counsel appearing on behalf of the parties. Having done so, we are of the view, on the basis of the

material on the record that the decision of the Second Respondent cannot be faulted. We now proceed to set out our reasons, considering as we do so, the relevant documents upon which reliance has been placed by Counsel for the Petitioner before the Court.

6. Section 118(2) of the Act provides thus:

> "The powers of a Development Authority with respect to the disposal of land acquired for it for the purposes of this Act shall be so exercised as to secure as far as practicable <u>that persons who were living or carrying on business or other activities on the land so acquired</u> shall if they so desire to obtain a plot or accommodation on land belonging to or vesting in the Development Authority and are willing to comply with any requirements of the Development Authority as to its Development have an opportunity to obtain a plot or accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such

land has been acquired from them."

7. In terms of the statutory mandate of Section 118(2), the Second Respondent has framed a Scheme known as the Gaothan Expansion Scheme in order to rehabilitate persons who were either residing upon the lands which were acquired or were carrying on business thereon. Sub-section (2) of Section 118, it may be noted, requires the Second Respondent to secure as far as practicable that persons who are living or carrying on business or other activities on the land that is acquired should, if they so desire, be allotted alternate land vesting in the authority subject to due compliance with the requirements of the authority. The case of the Petitioner which has to be considered here is whether it has been demonstrated on the basis of cogent material that the Petitioner was carrying on business on the lands that were acquired.

8. Amongst the documents that have been relied upon is a copy of the award of the Special Land Acquisition Officer, (Exhibit 'G' to the Petition). The award is significant for the present

purposes because no claim was made by the Petitioner in the course of the acquisition proceedings for the loss of business that was likely to be caused due to the acquisition of the lands. The award only mentions that there was a kaccha temporary structure admeasuring 2o' x 16' with a tiled roof. No evidence was produced by the Petitioner in support of the claim for compensation except for a statement that the land abutted a road and that it had an elevated position resulting in a good breeze and a commanding view of the creek. The value of the structure was assessed at Rs.100/-. If indeed, as the Petitioner now claims, the land that was acquired was being used for carrying on business on the date of acquisition, the absence of any such claim before the SLAO when the award was made would detract from the bonafides of the case that any such business was in fact being carried on.

9. That apart, from the documentary material on the record, it emerges that on 3rd December 1964, permission had been granted by the Assistant Collector to the erstwhile land owner under Section 63 of the Bombay Tenancy and Agricultural Lands

Act, 1948 for the sale of the land to the Petitioner for non-agricultural purposes subject to the condition that the land so purchased should be used for the purposes for which permission was granted within one year from the date of the order. The Petitioner was required to obtain non-agricultural permission within a period of six months from the date of the order. On 30th April 1966, the Petitioner merely enquired with the Prant Officer as to whether N.A. permission was required. Admittedly, no N.A. permission was obtained. When the Petitioner was called upon to produce the N.A. Permission by CIDCO, the Petitioner wrote to the Tahsildar on 17th March 1989 seeking a copy of the same if such permission had been granted. The Petitioner has relied upon certificates dated 29th July 1989 and 3rd August 1989 issued by the Sarpanch. There is, however, merit in the contention of the Second Respondent that these certificates are contradictory and a self serving attempt to bolster the case of the Petitioner. The first certificate states that Sarpanch knows the Petitioner very well and that "Shri B.F. Wadia was staying in the Belapur Panchayat area from 1970 to 1983-84." Obviously what the Sarpanch overlooked

was that B.F. Wadia & Sons is a partnership firm. The Sarpanch purported to certify that the Petitioner had paid taxes for business from 1970 to 1984. The Petitioner produced the assessment list of the Village Panchayat for the year 1969-70 which showed that only house tax of 75 paise was levied on certain house property. There is merit in the contention of the Second Respondent that this only establishes the existence of the temporary structure which was also reflected in the award of the SLAO under the provisions of the Land Acquisition Act, 1894. The Petitioner has relied upon a certificate of a Purchase Executive of Mafatlal Engineering Industries Ltd. , which is in the following terms:

> "This is to certify that Messrs B.F. Wadia & Sons, 142 Reay Road, Bombay 400010 were given annual contract during Nineteen Sixties and Seventies for supplies of Packing Timber to National Machinery Manufacturers (now known as Mafatlal Engineering Industries Ltd.). From our old records it is found that in the year 1969 our Purchase Order No. was 66926 and 69074 in 1970)."

This certificate *ex-facie* does not advert to the lands which were the subject matter of the acquisition. CIDCO has in its affidavit in reply drawn the attention of this Court to the fact that the Petitioner failed to produce any contracts with the Company with reference to the site of the lands which were acquired.

10. There is absolutely no evidence to show that the lands which were acquired were utilized at any time for the purposes of business. What emerges from the aforesaid discussion is that (i) The Petitioner did not produce NA permissions that would establish the user of the acquired land for non-agricultural purposes; (ii) Admittedly, no claim was made for loss of business before the SLAO; (iii) The award as well as the admitted position is that there was only an old temporary structure admeasuring 20' x 16'; and (iv) The certificate of the Sarpanch of the Grampanchayat is for the reasons already indicated a document on which no reliance could be placed because of its inherent contradictions. The Second Respondent has submitted in its affidavit that it is unlikely that a business entity such as the Petitioner would choose

to have a godown/office in a temporary structure admeasuring 20' x 16'.

11. On a preponderance of probabilities therefore, we are of the view that the assessment of the material by the Second Respondent cannot be faulted. This Court in the exercise of its jurisdiction under Article 226 of the Constitution would not be justified in substituting its own view of the material that was produced by the Petitioner for the view reasonably formed by the Second Respondent. In any event, we have adverted to that material in order to lend assurance to the ultimate conclusion of the Court that the present case does not warrant the exercise of the jurisdiction under Article 226 of the Constitution to interfere with the decision of the Second Respondent.

12. The petition shall, in the circumstances, stand dismissed. In the facts of the case, there shall be no order as to costs.

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